

SERIAL 08067 ITN DARK FIBER SERVICES
Contract –Zayo Fiber Solutions LLC

DATE OF LAST REVISION: December 27, 2010 CONTRACT END DATE: January 31, 2014

CONTRACT PERIOD THROUGH JANUARY 31, 2014

TO: All Departments
FROM: Department of Materials Management
SUBJECT: Contract for **DARK FIBER SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **February 11, 2009**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

BW/mm
Attach

Copy to: Materials Management
Don Anderson, Office of Enterprise Technology



CONTRACT PURSUANT TO ITN

This master contract ("Contract") is entered into this day of February 11, 2009 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and **Zayo Fiber Solutions LLC** ~~AGL Networks, LLC~~ a ~~Colorado Georgia~~ corporation ("Contractor") for the purchase of Fiber.

1.0 TERM

- 1.1 This Contract is for a term of FIVE (5) years, beginning on the 11th day of February, 2009 and ending the 31st day of January, 2014.
- 1.2 The County may, at its option and with the written agreement of the Contractor, extend the period of this Contract for additional terms up to a maximum of FIVE (5) years, (or at the County's sole discretion, extend the Contract on a month to month basis for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original Contract period, or any additional term thereafter. If the term of one or more Product Orders extends beyond the expiration or termination of this Contract, notwithstanding the language above, then this Contract will remain in effect as to each Product Order then in effect until the terms for such Product Orders placed hereunder have expired. In no event will new Product Orders under this Contract be permitted if the Contract has expired or been terminated.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the License Fees and all other sum(s) stated in the applicable Product Order using a form substantially similar to the form in Exhibit B-4. Once a Product Order is fully executed by both Parties, the License Fees for each such Product Order shall be transmitted to Exhibit A. Each Product Order pricing will be mutually agreed upon in writing by the Parties and incorporated into the Contract.
- 2.2 Payment shall be made upon the County's receipt of a properly completed invoice. Invoices shall contain the following information: Contract number, purchase order number, item numbers, description of supplies and/or services, sizes, quantities, unit prices, extended totals and any applicable sales/use tax.
- 2.3 INVOICES AND PAYMENTS:
 - 2.3.1 **The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:**
 - 2.3.1.1 Company name, address and contact
 - 2.3.1.2 County bill-to name and contact information
 - 2.3.1.3 Contract Serial Number
 - 2.3.1.4 County purchase order number
 - 2.3.1.5 Invoice number and date
 - 2.3.1.6 Payment terms
 - 2.3.1.7 Date of service

- 2.3.1.8 Quantity (number of days or weeks)
- 2.3.1.9 Contract Item number(s)
- 2.3.1.10 Description of Purchase (product or services)
- 2.3.1.11 Pricing per unit of purchase
- 2.3.1.12 Extended price
- 2.3.1.13 Total Amount Due

Problems regarding billing or invoicing shall be directed to the using agency as listed on the Purchase Order.

- 2.3.2 Payment may be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Award the Contractor shall fill out an EFT Enrollment form (to be provided by the Procurement Officer) or as located on the County Department of Finance Website as a fillable PDF document (www.maricopa.gov/finance/).
- 2.3.3 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

3.0 DUTIES

- 3.1 The Contractor shall perform all duties stated in Exhibit "B, B-1, B-2 and B-3, B-4."

4.0 TERMS & CONDITIONS

4.1 INDEMNIFICATION:

- 4.1.1 By County: To the fullest extent permitted by law, County shall indemnify, hold harmless, and defend Contractor, members of their governing bodies, directors, officers and employees, for, from and against all claims, damages, losses, and expenses (including, but not limited to, attorneys' fees) arising out of or resulting from the use of the Fiber and any equipment, or any condition created in under, on or about the property where the Fibers or Facilities are located, any buildings or structures where the Fibers and Facilities are located and the Facilities, including without limitation any accident, injury, or damage whatsoever occurring on, under, about, or in the Property, Buildings and the Facilities are located, to the extent that any such claim, damage, loss, or expense is caused in whole or in part by any act or omission of County, or its employees and agents. The agreement whereby County agrees to hold Contractor harmless shall include latent defects.

In addition, County shall indemnify, hold harmless, and defend Contractor, members of their governing bodies, directors, officers and employees for, from and against all claims, damages, losses, and expenses (including, but not limited to, attorneys' fees) arising out of or relating to the following:

- 4.1.1.1 the conduct of County's or its Affiliates' business, including without limitation the use or provision of services or the content of any transmission; or
- 4.1.1.2 a contractual or other relationship between a claiming Party and either County or its Affiliates, including any claim for interruption of service or in respect of service quality.

County shall have charge of all such proceedings and shall reimburse to Contractor any amount that Contractor is required to pay for any such damage, injury or claim, including, but not limited to costs, attorney's fees and other expenses incurred in connection with any such damage, injury or claim, the investigation thereof, or defense.

4.1.2 By Contractor: Subject to the limitations of Section 4.10 (Limitation of Liability; Warranty Disclaimers), to the fullest extent permitted by law, Contractor shall indemnify, hold harmless, and defend County and its directors, officers and employees, for, from and against all claims, damages, losses, and expenses including, but not limited to, attorneys' fees arising out of or resulting from the use of the Fiber and equipment, or any condition created in, under, on, or about the Property, Buildings and Facilities, or any accident, injury, or damage whatsoever occurring on, under, about or in the Property, Buildings and Facilities, provided that any such claim, damage, loss, or expense is caused by any act or omission of Contractor, or its employees and agents. The agreement whereby Contractor agrees to hold County harmless shall include latent defects. Contractor shall have charge of all such proceedings and shall reimburse to County any amount that County is required to pay for any such damage, injury or claim, including, but not limited to costs, attorney's fees and other expenses incurred in connection with any such damage, injury or claim, the investigation thereof, or defense. The obligation of indemnity by Contractor shall not apply to claims by County employees that are covered by workers' compensation insurance.

4.1.3 Mutual Indemnification: Subject to the limitations of Section 4.10 (Limitation of Liability; Warranty Disclaimers), Contractor and County agree to defend, indemnify and hold harmless the other and the other's directors, officers, employees, agents and affiliates against and from any claim, loss, liability, demand, lawsuit, action of any kind, and costs (including reasonable attorneys' fees and costs) arising from any breach by the indemnifying Party of any representation, warranty or agreement contained in this Contract.

4.2 INSURANCE REQUIREMENTS:

Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance or reinsurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

The insurance policies required by this Contract, except Workers' Compensation, and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

Contractor is required to procure and maintain the following coverage:

4.2.1 Commercial General Liability.

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage for any claim arising out of Contractor's work or service.

4.2.2 Automobile Liability.

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

4.2.3 Workers' Compensation.

Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

4.2.4 Certificates of Insurance.

4.2.4.1 Prior to commencing work or services under this Contract, Contractor shall have insurance in effect as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall be made available to the County upon 48 hours notice. **BY SIGNING THE AGREEMENT PAGE THE CONTRACTOR AGREES TO THIS REQUIREMENT AND UNDERSTANDS THAT FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF THIS CONTRACT.**

In the event any insurance policy (ies) required by this Contract is (are) written on a "claims made" basis, coverage shall extend for two (2) years past

completion and acceptance of Contractor's work or services and as evidenced by annual certificates of insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.

4.2.4.2 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

4.3 NOTICES:

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations, or other direction or communication hereunder by any Party to another shall be (a) in writing, (b) effective on the first business day following the date of receipt, and (c) delivered by one of the following means: (i) by personal delivery; (ii) by prepaid, overnight package delivery or courier service; (iii) by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid; (iv) by computer email or (v) by prepaid telecopier, telex, or other similar means of electronic communication (followed by confirmation on the same or following day by overnight delivery or by mail as aforesaid). All notices given under this Contract shall be addressed as follows:

County: Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona 85003

Contractor:	AGL Networks, LLC Ten Peachtree Place 10th Floor Atlanta, Georgia 30309 Attn: Contract Management	Zayo Fiber Solutions LLC 400 Centennial Parkway Suite 200 Louisville, CO 80027 Attn: Hannah Wanderer
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With a copy to: ~~Associate General Counsel~~
~~AGL Resources, Inc.~~
~~Ten Peachtree Place~~
~~15th Floor~~
~~Atlanta, Georgia 30309~~
~~Facsimile: 404 584 3714~~

or to such other postal addresses, email addresses, or telecopier numbers of which the Parties have been advised in writing by any of the above-described means. Personal delivery to a Party or to any officer, partner, agent, or employee of such Party at its address herein shall constitute receipt. The following shall also constitute receipt: (i) a Party's rejection or other refusal to accept notice, and (ii) the inability to deliver to a Party because of a changed postal address, email address or telecopier number of which no notice has been received by the other Party. Notwithstanding the foregoing, no notice of change of postal address, email address or telecopier number shall be effective until five (5) business days after the date of receipt thereof. Each Party agrees to promptly give the other Party notice of any change in its above listed, respective postal addresses, email addresses, telecopier numbers or contact persons.

4.4 REQUIREMENTS CONTRACT:

4.4.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract for Fiber to be provided by Contractor to the County within

Maricopa County, Arizona. Notwithstanding the foregoing, Contractor's obligation to provide Fiber and Service is subject to both Parties executing a Product Order as required in Exhibit B-4.

4.5 PRICE ADJUSTMENTS:

Any requests by Contractor for reasonable price adjustments must be submitted sixty (60) days prior to the Contract renewal date etc. Requests by Contractor for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the (Consumer Price Index) or by performing a market survey.

4.6 TERMINATION FOR CONVENIENCE

The County reserves the right to terminate any Product Order or the entire Contract, upon thirty (30) days written notice when it is in the best interests of the County to do so. Upon receipt of such written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, this Contract with respect to the affected Product Order shall terminate as to the Fiber and the County shall not be entitled to a refund of any of the consideration paid. Upon such termination, all then outstanding fees, costs, and other expenses with respect to the Fibers shall be immediately due and payable to Contractor by County, along with an Early Termination Charge (defined in the applicable Product Orders) as calculated and set forth in the applicable Product Orders. Additionally, all documents, data and reports prepared by the Contractor under the Product Orders shall become the property of and be delivered to the County upon demand after payment to Contractor of the Early Termination Charge in the applicable Product Order, along with all Contractor's costs and expenses incurred for the work in progress, work completed and materials accepted before the effective date of the termination. The County shall be obligated to pay and Contractor shall be entitled to receive payment of all Contractor's costs and expenses incurred for the work in progress, work completed and materials accepted before the effective date of the termination, along with the Early Termination Charge as set forth in the applicable Product Order(s).

4.7 TERMINATION FOR DEFAULT

4.7.1 In addition to all the other rights and remedies reserved in the Contract, either Party may terminate the Contract in whole or in part, if a default is not cured within thirty (30) days of the defaulting Party's receipt of written notice specifying the default in reasonable detail due to either Party's (a) failure to comply with any term or condition of the Contract, (b) to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The County Procurement Officer shall provide written notice of the termination and the reasons for termination.

4.7.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor and paid for by the County, under the Contract shall become the property of and be delivered to the County on demand.

4.7.3 The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the County for any reasonable and documented excess direct costs incurred by the County in procuring materials or services in substitution for those due from the Contractor.

4.7.4 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

4.8 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the Contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County from any other party to the Contract arising as the result of the Contract.

4.9 FORCE MAJEURE:

Notwithstanding anything in this Contract to the contrary, neither Contractor nor County shall be liable or responsible for a delay or failure in performing or carrying out any of its obligations (other than obligations to make payments) under this Contract caused by an event of Force Majeure. For purposes of this Contract, "Force Majeure" shall mean any cause beyond the reasonable control of Contractor or County, as applicable, or beyond the reasonable control of any of their respective contractors, subcontractors, suppliers or vendors, including without limitation:

- 4.9.1 Acts of God, including, but not necessarily limited to, lightning, earthquakes, fires, explosions, floods, wind, other natural catastrophes;
- 4.9.2 Sabotage, acts of a public enemy, acts of government or regulatory agencies, wars, blockades, embargoes, insurrections, riots, or civil disturbances;
- 4.9.3 Labor disputes, including, but not necessarily limited to, strikes, work slowdowns, work stoppages, or labor disruptions, labor or material shortages, or delays or disruptions of transportation;
- 4.9.4 Orders and judgments of any federal, state or local court, administrative agency or governmental body;
- 4.9.5 The adoption of or change in any federal, state or local laws, rules, regulations, ordinances, permits or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits or licenses, by a court or public agency having appropriate jurisdiction after the date of the execution of this Contract; or
- 4.9.6 Any suspension, termination, interruption, denial or failure to issue or renew by any governmental authority or other party having approval rights of any approval required or necessary hereunder for construction, installation or operation of any Fiber and equipment or for either Party to perform its obligations hereunder, except when such suspension, termination, interruption, denial or failure to issue or renew results from the negligence or failure to act of the Party claiming the occurrence of an event of force majeure.

If either Contractor or County is rendered unable to fulfill any of its obligations under this Contract by reason of an event of Force Majeure, such Party shall promptly notify the other and shall exercise due diligence to remove such inability with all reasonable dispatch; provided, that nothing contained in this paragraph shall be construed as requiring Contractor or County to settle any strike, work stoppage or other labor dispute in which it may be involved, or to accept any permit, certificate, license or other approval on terms deemed unacceptable to such Party, or to enter into any contract or other undertaking on terms which the Party deems to be unduly burdensome or costly.

4.10 LIMITATION OF LIABILITY; WARRANTY DISCLAIMERS:

Except to the extent specifically provided elsewhere in this Contract, Contractor shall not be liable for any service interruption in Contractor's fiber network, the Fiber, another provider's network being used to provide Fiber (a "Service Interruption") caused because of reasonable maintenance of Contractor's fiber network or its communications or electric systems in the ordinary course of business, unless the Service Interruption is caused as a result of a material deviation from the MOP, Contractor's failure to obtain a MOP when required under this Contract, or Contractor's negligence or intentional wrongful conduct. If a Service Interruption is caused as a result of a material deviation from the MOP, Contractor's failure to obtain a MOP when required under this Contract, or Contractor's negligence or intentional wrongful conduct, Contractor's liability shall be limited to providing Service Interruption Credits. In no event will either Party have liability to the other or its customers for consequential, exemplary, special, incidental, indirect and/or punitive damages, even if such Party has been advised of the possibility of such damages, including without limitation, loss of actual or anticipated profits or revenue, loss by reason of shut-down, loss of use or interest, non-operation or increased expense of manufacturing or operation, or any costs, labor or materials required for reconstruction or repairs. The liability and damages limitations in this Section apply to all causes of action, including without limitation breach of contract, warranty, negligence, strict liability, misrepresentation and any torts. CONTRACTOR EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4.11 OFFSET FOR DAMAGES:

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or default under this Contract.

4.12 ADDITIONS/DELETIONS OF SERVICE

The County reserves the right to add and/or delete products and/or services provided under this Contract, upon mutual agreement between the Parties to pricing, terms and conditions for such added or deleted products and/or services.

4.13 SUBCONTRACTING:

Contractor agrees to provide Contractor's Fiber to County for the performance of its obligations under this Agreement. Subject to the foregoing sentence, the Contractor may assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, provided that Contractor shall remain obligated to County under the terms of this Contract for any such duties and for the work performed by its third person subcontractors and assignees. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

4.14 ASSIGNMENT AND OTHER TRANSFERS:

4.14.1 Assignment and Sublicensing:

This Contract and the rights granted under this Contract are being granted in reliance on the financial standing and business or technical experience of County and are thus granted personally to County by Contractor. Except as stated to the contrary, neither Party may assign or sublicense any right under this Contract, whether in whole or in part, without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign its rights and obligations in this Contract in whole or in part without the consent of the other Party to: (a) an Affiliate, (b) to any entity into which a Party may be merged or consolidated (c) an entity which purchases all or substantially all of the assets of such Party or (d) an entity which purchases all or substantially all of the assets of Contractor

that are used in the provisioning of Fiber or Services to the County in Maricopa County, Arizona; provided that the assignee agrees in writing to assume and be bound by all of the terms and conditions of this Contract and the applicable Product Order(s) from and after the date of the assignment; and provided further that upon such assignment, the assignor shall be relieved of its duties and obligations under the Contract. Any attempted transfer, assignment or sublicense in violation of the foregoing shall be null and void.

In addition, County agrees to notify Contractor when a material change in the County owned optical equipment, supported by the Fiber, occurs. Such notification shall be for informational purposes only, and the Parties expressly agree that County's failure so to notify Contractor shall not constitute an event of default under this Contract or give rise to any rights or remedies in favor of Contractor against County, provided however, the County shall be responsible for any additional Fully Loaded Costs incurred by Contractor, due to the County's failure to notify Contractor.

4.14.2 Mergers and Acquisitions:

Notwithstanding any provision of this Contract to the contrary, neither Party shall be restricted or prohibited by this Contract from participating in or completing any mergers with or acquisitions of businesses (including without limitation bulk sale or purchase of assets), provided that the successor by merger or purchase to the Party shall be subject to the terms, covenants and conditions of this Contract and shall assume or by operation of law be deemed to have assumed all obligations of the Party hereunder.

4.14.3 No third party Beneficiaries:

Nothing herein shall be construed or interpreted to give any person other than County, Contractor any legal or equitable right, remedy, claim, or defense under or in respect of this Contract. There are no intended third party beneficiaries of this Contract, except as expressly stated herein.

4.14.4 Waiver:

A waiver by either Party of a default by the other Party and/or the performance of the other Party's obligations contained in this Contract shall not be deemed a waiver of the performance of any other obligations or of any subsequent default in the performance of the same or any other obligation contained in this Contract.

4.14.5 No Joint Venture:

No agency, employment agreement, joint venture, or partnership is created between the Parties to this Contract, and neither Party shall be deemed to be an agent of the other, nor shall either Party have the right, power or authority to act for the other in any manner to create any obligations, contracts, or debt binding upon the other Party.

4.15 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both Parties. Maricopa County Materials Management shall be responsible for approving all amendments for Maricopa County.

4.16 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the County shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately and reasonably supported and documented.

4.17 AUDIT DISALLOWANCES:

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.18 ALTERNATIVE DISPUTE RESOLUTION:

4.18.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the Parties participate in the arbitration in good faith, such arbitration is not binding and the Parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the Parties cannot agree on an arbitrator, each Party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The Parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.18.1.1 Render a decision;

4.18.1.2 Notify the Parties that the exhibits are available for retrieval; and

4.18.1.3 Notify the Parties of the decision in writing (a letter to the Parties or their counsel shall suffice).

4.18.2 Within ten (10) days of the notice of decision, either Party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing Party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all Parties or their counsel.

4.18.3 Any Party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

4.19 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.20 RIGHTS IN DATA:

During the Term of this Agreement, the County shall own and have the use of all data and reports resulting from a Product Order Accepted under this Contract without additional cost or other restriction except: (1) as provided by law or (2) where any such information is proprietary or confidential information and cannot be disclosed by Contractor. Each Party shall supply to the

other Party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.21 HEADINGS AND EXPRESSIONS:

Titles and headings used in this Contract are for reference only and are not a part of this Contract. Words and expressions used in this Contract shall be applicable according to the context and without regard to the number or gender of such words or expressions (with the exception of numbers indicating price, quantity, or technical specifications).

4.22 INTEGRATION:

This Contract represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

4.23 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona.

4.24 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:

4.24.1 By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV.

4.24.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or department of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

4.25 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:

4.25.1 By entering into the Contract, the Contractor certifies it does not have scrutinized business operations in Sudan or Iran. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract.

4.25.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or department of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

AUTHORIZED SIGNATURE

PRINTED NAME AND TITLE

Ten Peachtree PL NE, Atlanta GA 30309

ADDRESS

Dec 16, 2008

DATE

MARICOPA COUNTY

BY:

May W Wilson
CHAIRMAN, BOARD OF SUPERVISORS

FEB 11 2009

DATE

ATTESTED:

CLERK OF THE BOARD 012809

FEB 11 2009

DATE

APPROVED AS TO FORM:

DEPUTY MARICOPA COUNTY ATTORNEY

1/2/9
DATE

EXHIBIT A PRICING

SERIAL 08067-ITN

PRICING SHEET: NIGP CODE 92047

BIDDER NAME: ~~AGL Networks, LLC~~ **Zayo Fiber Solutions LLC**

VENDOR # :

BIDDER ADDRESS: ~~40 Peachtree Place, NE, Atlanta, GA 30309~~
400 Centennial Parkway, Suite 200, Louisville, CO 80027

P.O. ADDRESS:

BIDDER PHONE #: ~~Hdqtrs 404-584-3110 or Local 602-314-4476~~ **303/414-4151**

BIDDER FAX #: ~~404-584-3375~~ **303/381-3307**

COMPANY WEB SITE: www.AGLNetworks.com

COMPANY CONTACT (REP): ~~Jeff Pah 602-314-4476~~ **Hannah Wanderer**

E-MAIL ADDRESS (REP): ~~jpah@aglresources.com~~ hwanderer@zayoenterprise.com

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: ☒ YES ☐ NO

OTHER GOV'T. AGENCIES MAY USE THE TERMS AND CONDITIONS OF THIS CONTRACT*: ☒ YES
☐ NO

*THE TERMS AND CONDITIONS OF THIS CONTRACT WILL BE PUT INTO A SEPARATE AGREEMENT TO BE EXECUTED BY CONTRACTOR AND THE APPLICABLE GOV'T AGENCY.

PAYMENT TERMS: BIDDER IS REQUIRED TO PICK ONE OF THE FOLLOWING.

TERMS WILL BE CONSIDERED IN DETERMINING LOW BID.

FAILURE TO CHOOSE A TERM WILL RESULT IN A DEFAULT TO NET 30.

BIDDER MUST INITIAL THE SELECTION BELOW.

NET 10	_____
NET 15	_____
NET 20	_____
NET 30	AGL Terms _____
NET 45	_____
NET 60	_____
NET 90	_____
2% 10 DAYS NET 30	_____
1% 10 DAYS NET 30	_____
2% 30 DAYS NET 31	_____
1% 30 DAYS NET 31	_____
5% 30 DAYS NET 31	_____

1.0 PRICING:

NOTE: PRICING WILL BE ADDED PER APPROVED PRODUCT ORDER BY BOTH PARTIES PRIOR TO ANY WORK PERFORMED.

Product Order No.1 **Eff. 02/18/09**

Term of use of Fibers: Five (5) years from Acceptance of Fiber Estimated Fiber miles: 0.8 miles
Total Cost: \$502,500 one time payment payable Net 30

Product Order No.2 **Eff. 04/16/09**

Term of use of Fibers: Ten (10) years from Acceptance of Fiber Estimated Fiber miles: 118 miles
Total Cost: \$618,161 one time payment payable Net 30

EXHIBIT B

1.0 **INTENT:**

Contractor to provide Fiber to County as requested in Product Orders submitted by County and accepted by Contractor.

1.1 DEFINITIONS

As used in this Contract, the following terms shall have the meanings specified below:

“Accept” or “Accepted” or “Acceptance” means the issuance by County of written notice in the form of a signed Acceptance Package stating that County approves the Fibers as being in compliance with the executed Product Order and/or this Contract.

“Acceptance Package” means the document delivered to County that demonstrates compliance with the Specifications and Product Order(s) as set forth in Exhibit B-1 (Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing).

“Affected Portion” means the portion of any Segment that is or may; (i) be affected by a Taking; (ii) become the subject of a lien or transfer; or (iii) be damaged or destroyed as the result of the occurrence of an event of casualty.

“Affiliate” means, with respect to Contractor, any person or entity that controls Contractor, is controlled by Contractor, or is with Contractor, under common control of another entity.

“Approvals” means all permits, approvals and licenses from all government authorities or other Parties having jurisdiction or approval rights respecting; (i) the use and occupation of any Right of Way where Facilities are located or to be constructed; (ii) the use of Facilities; and (iii) “Blue Stake” clearances.

“Building Entrance” means that portion of the Fiber which runs from a connection point on the Contractor’s fiber optic system to the point-of-presence inside a customer’s Building, including all Rights of Way, conduit, Fiber, fiber optic patch panel and other Facilities necessary to establish the connection from a connection point on the Fiber to the customer’s Building.

“Building Entrance Fee” means cost associated with the securing of access rights to a building.

“Commencement Date” means the date the license of Fibers under a Product Order commences, as established in an Acceptance Package executed by the Parties pursuant to Contract 08067-ITN.

“Completion Interval” has the meaning as set forth in Exhibit B-1(Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing).

"Connection Charge" means a one-time charge payable for Make Ready Work.

“Contract” means this Master Contract 08067-ITN, including all Exhibits and Product Orders added hereto from time to time.

“Deficiency Notice” means written notice that the Fibers as Delivered do not conform to the Specifications or Product Order and as further set forth in Exhibit B-1 (Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing).

“Deliver” or “Delivery” means delivery of an Acceptance Package to County demonstrating compliance with the Product Order and Specifications.

“Delivery Date” means the date specified in a Product Order by which Contractor is obligated to Deliver the Fibers to County in compliance with the Product Order.

“Demarcation Point” means the point that defines where ownership and maintenance obligations begin and end as generally defined in Exhibit B-1 (Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing) and as specifically defined in any Product Order(s).

“Discovery” means detection of a discontinuity of signal transmitted over Fiber, or other evidence of a service interruption and as further set forth in this Contract.

“Electric Services” means electric power generation, transmission and distribution services and other services relating to the generation, transmission and distribution of electric power.

“Facilities” means manholes, conduit, innerduct, risers, collocation equipment and space, switching facilities, fiber termination equipment, splice cases, interconnection equipment, racks, or other equipment associated with either County’s or Contractor’s fiber optic system.

“Fiber(s)” means the fiber optic strands provided without electronics or optronics to County by Contractor as described in a Product Order.

“Fully Loaded Costs” means shall mean all actual costs paid or payable by Contractor in accordance with the established accounting procedures generally used by Contractor, which Contractor utilizes in billing third parties for reimbursable projects, including the following: (i) internal labor costs (including wages, salaries and benefits) and reasonable overhead allocable to such labor costs, and (ii) all other costs and expenses paid or payable on a pass-through basis (e.g., equipment, materials, supplies, contract services, etc.). No mark-up costs shall be included in the definition of Fully Loaded Costs.

“Installation Charge” means a one-time charge payable for the construction and installation of a Lateral Connection, Building Entrance or Facilities.

“Lateral Connection” means the Segments of Fiber and Facilities that connect from Contractor’s fiber optic Ring to a Building or other location designated in a Product Orders.

"License Fee" means (i) the periodic recurring charges under Product Orders paid by the County to Contractor (excluding Maintenance Charges), or (ii) where the Parties have agreed that County will pay all such recurring charges in a lump-sum payment payable on the Commencement Date, the up-front lump sum payments (excluding Installation Charges, Administration Charges and Connection Charges) and any periodic recurring charges (excluding Maintenance Charges) under Product Orders.

"LEC" means a Local Exchange Company (e.g., Qwest, and competitive local exchange companies or other carriers).

“Make Ready Work” means the Services, including but not limited to pre-design, design, splicing, testing and other related services, generally associated with reconfiguring or rerouting Fiber, interconnecting Fiber with Lateral Connections, and otherwise putting Fiber into service.

“Maintenance Charge” means a periodic recurring charge or a lump sum charge payable for maintenance of the Fibers.

“Method of Procedure (MOP)” means a standard operating procedure for conducting Scheduled Maintenance between and among Contractor, County and the LEC (if applicable) to be prepared by both Parties using the procedures as referenced in Exhibit B-1 (Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing).

“Party” shall mean each of Contractor and County and “Parties” shall mean Contractor and County.

“Product Order” as represented in Exhibit B-4 means a written order issued by County for (i) Fibers, (ii) Lateral Connections, (iii) Make Ready Work, or (iv) other Services, executed from

time to time by both Parties, containing at least the information described in Section 12.4 below "Pro Rata Share" means a proportion equal to a fraction, the numerator of which is the number of Fibers and the denominator of which is all fibers in the affected portion of a Segment. If this fraction varies over a particular Segment, then the Pro Rata Share shall be equal to the weighted average (weighted by length as set forth in installation records) of the relevant portions. For example, if the fraction for one hundred (100) feet of the affected Segment is 0.1 and the fraction for the remaining fifty (50) feet of the affected Segment is 0.07, the weighted average for the entire route would be 0.09.

"Right-Of-Way (ROW)" means Contractor owned or controlled right of ways, easements, licenses or rights to use or occupy real property owned, leased, or licensed by others, including corporations, railroads, individuals, municipalities, counties, states or other entities, including a LEC.

"Ring" shall mean a contiguous assembly of the Contractor fiber optic cable that starts and ends at the same location as generally identified in each individual Product Order, as applicable.

"Scheduled Maintenance" means planned outages that may occur for the purpose of maintaining, repairing, or enhancing Contractor's fiber optic system or for County defined maintenance work. Scheduled Maintenance will occur according to a mutually approved Method-of-Procedure and as further set forth in Exhibit B-1 (Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing).

"Segment" means Fiber delineated by specific end points designated in Product Orders.

"Services" means the provision of maintenance and repair of the Fibers, Make Ready Work, the construction of Lateral Connections, acquisition of Approvals, and other ancillary services provided or to be provided under Product Orders.

"Service-Affecting Condition" means a discontinuity on both paths of a diversely routed physical Fiber ring causing loss of internal or external traffic, except that contractor Scheduled Maintenance or Force Majeure events that cause a loss of such traffic shall not constitute a Service Affecting Condition.

"Service Interruption Credit" has the meaning set forth in Section 11.0.

"Single Point of Failure" means any point where a single Fiber cut would cause a Service-Affecting Condition.

"Specifications" means the Fiber specifications as set forth in Exhibit B-1 (Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing).

"Splice Point" means a point where the County's fiber network interconnects with the Fiber in Contractor's fiber optic system.

"Taking" means the exercise of the power of eminent domain by any public or quasi-public authority.

"Telecommunications Services" means all services delivered by County including, without limitation, the two-way transmission of signals, messages, images, sounds, data and other information of any nature transmitted to customers, excluding the license of Fiber.

2.0 **SCOPE OF SERVICES:**

Fiber. On the terms and conditions herein and in each Product Order, Contractor licenses to County, and County licenses from Contractor, the right to use the Fiber specifically described in each Product Order and any equipment described in the Product Order as being licensed to County. All right, title and interest in the Fiber and any associated equipment shall at all times remain exclusively with Contractor (or with any third party from whom Contractor obtains the rights to the Fiber), except for the rights granted to County to

use the Fiber and associated equipment under this Contract and the applicable Product Order. County may use the Fiber solely for its lawful and internal use for providing Telecommunications Services in accordance with applicable laws, rules, regulations, orders and other regulatory requirements, now or later in effect, of any governmental authority having jurisdiction over County, the Fiber or the use thereof. This Contract and the license granted hereunder are subject to termination or expiration as provided herein, and shall have no force or effect thereafter, except as provided in Section 12.0 (Product Order Process) with respect to any Product Order that may continue to remain effective.

- 2.1 **Product Orders.** From time to time during the term of this Contract, the Parties may execute Product Orders under which Contractor will license Fibers to County and Contractor will provide such other Services related to the Fibers as may be specified in the Product Order. The term of a given Product Order may extend beyond the term of this Contract, in which case the provisions of this Contract shall continue to apply for the remaining term of any Product Order, it being expressly agreed by the Parties that all the terms and conditions of this Contract shall be and are hereby expressly incorporated into each and every Product Order. The Parties shall generally follow the Product Order Process set forth in Section 12.0 (Product Order Process) when requesting, or responding to requests for quotations for the purposes of licensing Fiber or related Services under this Contract. The execution of this Contract does not obligate either Party to execute a Product Order.
- 2.2 **Service Interruption Credits.** Contractor agrees to provide Service Interruption Credits to County according to the provisions in Section 11.0 (Service Interruption Credits).

3.0 **MAINTENANCE, REPAIR AND OPERATIONS**

- 3.1 Contractor will perform all maintenance and repairs of Fibers in accordance with the standards and terms of Exhibit B-1 (Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing).
- 3.2 **Demarcation Points.** The Parties' obligations with respect to Demarcation Points are generally set forth in Exhibit B-1 (Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing), and specifically defined in attachments to each Product Order.
- 3.3 **Acceptance of Fiber.** Acceptance of Fiber will occur according to Product Orders and the provisions of Exhibit B-1 (Fiber, Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing)
- 3.4 **Services.** The Parties contemplate adding Lateral Connections, modifying network topologies and other Services, from time to time, to make use of Fiber. All Services shall be specified in an executed Product Order. County acknowledges that due to electric safety concerns, only Contractor can perform Make Ready Work. Contractor will provide such Services according to an executed Product Order.
- 3.5 **Lateral Connections.** If an executed Product Order specifies that County shall provide a Lateral Connection to Contractor's fiber optic system, County shall comply with the following:
 - 3.5.1 County shall provide the appropriate Demarcation Points and Facilities in either public ROW, or in a private easement obtained by County, at the closest available location to the Splice Point designated by Contractor.
 - 3.5.2 Contractor shall provide interconnection Services and Facilities (e.g. fiber termination cabinet, conduit, fiber, fiber splicing) on its ROW between the Contractor Splice Point and the Demarcation Point in exchange for payment of the Installation Charge as specified in the applicable Product Order. Contractor shall charge County an Installation Charge for such interconnection Services and Facilities.
 - 3.5.3 County shall be solely responsible for obtaining all Approvals applicable to such Lateral Connections, and this provision shall not be construed as a grant by Contractor or an

undertaking or agreement by Contractor to grant any easement, license or other right of way on lands owned or controlled by Contractor.

- 3.6 **Substitution.** Upon not less than sixty (60) days written notice from Contractor to County, Contractor may, at its option, substitute for the Fibers within any Segment or Segments or route, or any portions thereof, an equal number of alternative fibers within such Segment or Segments or route, or any portions thereof, provided that in such event, such substitution; (i) shall be at the sole cost of Contractor; (ii) shall use fiber meeting or exceeding the Specifications, and which has passed any testing required in accordance with the Acceptance provisions; (iii) shall not change any Demarcation Points; (iv) shall not cause a Service Affecting Condition, and (v) shall be effected according to Scheduled Maintenance standards and procedures and to an approved MOP, County's approval of which will not be unreasonably withheld.

At any time during the Term, County may submit a Request for Quote pursuant to Section 12.0 (Product Order Process) requesting Contractor to replace a Segment of Fiber under an existing Product Order with a different Segment or additional fiber strands on an existing Segment ("Replacement Fiber"). Contractor shall be under no obligation to enter into a Product Order to provide Replacement Fiber. If County notifies Contractor in writing that the Request for Quote is being submitted because of an early termination of service by County's customer, Contractor will use commercially reasonable efforts to accommodate County's request for Replacement Fiber, provided that (i) Contractor has excess fiber available, (ii) the Replacement Fiber is substantially equivalent to the replaced Fiber in terms of total route miles, strand miles, configuration and Facilities, and (iii) County shall pay for the difference in price, if any, between the original Fiber and the Replacement Fiber and any necessary and appropriate Services required to be performed by Contractor in connection with the decommissioning of the replaced Fiber and the commissioning of the Replacement Fiber, as specified in the Product Order. County shall continue to pay the related portion of the License Fee (the "Original License Fee") until the earlier of (i) the date that Contractor delivers the Replacement Fiber; or (ii) the Delivery Date agreed to by the Parties for the Replacement Fiber. Upon the date that Contractor delivers the Replacement Fiber, County shall begin paying the related License Fee for the Replacement Fiber as specified in the Product Order, and thereafter all references to Fibers shall include the Replacement Fibers.

4.0 **ACCESS TO PROPERTY AND BUILDINGS**

- 4.1 **Installation Rights.** To the extent that any Product Order provides for Contractor to do any installation of Fiber or Facilities or to perform Services on the property of an owner other than County (an "Owner"), County and/or Contractor will need to secure access for Contractor to the Owner's property identified in the Product Order (the "Property") and any buildings on the Property (the "Buildings"). If new easements or rights of way are necessary for the installation, County shall make reasonable efforts to obtain and grant an access easement, license or right of way, and/or will cooperate with Contractor in obtaining same from any necessary other person, entity or governmental authority, on terms satisfactory to Owner, County and Contractor in their reasonable discretion. If Contractor elects not to secure access, County shall make reasonable efforts to secure the access, and Contractor shall not be responsible for any inability to obtain or any delay in obtaining such access. Upon obtaining access to the Property and Buildings, County and its successors and assigns shall be obligated to (i) provide Contractor with the documentation showing the terms and conditions of the access grant, and (ii) grant to Contractor and its agents and third party contractors the non-exclusive right to conduct such installation on the Property, in the Buildings, and on or within any like Facilities or property of County. Contractor shall have no obligation to perform an installation unless all necessary rights are granted by Owner and/or County and any other Party as Contractor deems necessary, and, if access rights have been secured by County, it has provided Contractor with the documentation of the access grant.
- 4.2 **Access to Property, Buildings and Facilities.** Upon execution of a Product Order that provides for an installation of Fiber or Facilities or to perform Services, County shall, as described in Section 4.1 above, provide Contractor with access to the Property, Buildings and Facilities ("Access") for purposes of planning the installation. Throughout the term of this Contract and upon reasonable notice under the circumstances, County shall provide Access from time to time to Contractor and its agents and third party contractors, employees, officers, lessees and authorized

vendors, in connection with the construction, installation, modification, operation, maintenance, repair, update, disconnection, replacement and removal of the Fibers, Facilities, installation and equipment. County shall cooperate with Contractor to secure Access for Contractor (at no charge) to the Property, Buildings, Facilities and the equipment, of County's customers, and space therein for Contractor racks and other equipment as necessary for Contractor to perform its obligations under this Contract.

- 4.3 **Scope and Design.** To the extent that a Product Order provides for Contractor to do any installation, Contractor shall provide Owner and County with technical drawings showing the planned path for installation of conduit and fiber optic cable, connection points and the other initial equipment to be installed on the Property and in the Buildings or other Facilities (the "Preliminary Drawings"). The final drawings shall be satisfactory to Owner and County, in their reasonable discretion (the "Approved Drawings"). The Preliminary Drawings and the Approved Drawings shall be added as Exhibits to the Product Order. Conduit shall generally be installed in rights of way or easements on the Property. Upon completion of the installation, Contractor shall provide Owner and County "field installation record" drawings of the installation, and on request will provide them with updated drawings to show subsequent changes made.
- 4.4 **Installation on Site and in Buildings.** To the extent that a Product Order provides for Contractor to do any installation in a Building, the installation shall be performed at no cost to Owner (but shall be paid for by County pursuant to the applicable Product Order with no mark-up charges to County and shall substantially conform to the specifications in the Approved Drawings. Notwithstanding the above, if Contractor's installation in a Building was performed in addition to the original installation contemplated in the Product Order due to an act or omission caused by County, then Contractor may bill County for the Fully Loaded Cost, plus a 15% mark up to correct the deficiency caused by County. No material alterations to the Approved Drawings and no material alterations to the Buildings shall be made without the prior written consent of Owner and County, in their reasonable discretion. Contractor shall seek to minimize, and shall give two (2) business days prior notice of interference with other construction activities and normal business operations of Building owners and tenants. Owner and County will also seek to minimize, and shall give two (2) business days prior notice of interference with Contractor's installation.

5.0 **PROPERTY RIGHTS AND OBLIGATIONS**

- 5.1 **Encumbrances.** County shall not create or grant any lien, encumbrance, security interest or other property interest against any of the Fiber.
- 5.2 **Maintain Property Rights** Subject to the provisions of Section 6.2 (Relocation), the Parties shall timely perform all of their respective obligations pertaining to the use of such Fiber, in accordance with all applicable terms and conditions of the grants and property conveyances by which it holds a property interest therein, and shall take such other actions as may reasonably be necessary to prevent the lapse, forfeiture or termination of any such property interests.
- 5.3 **Defense of Property Interest.** Should the right of either Party to use, in accordance with the terms and conditions of this Contract, any Fiber be challenged by the holder or alleged holder of a property interest in such Right of Way or Building Entrance excluding property owned by the United States, the Parties shall defend the right to so use the Fiber. The Parties shall take all actions and execute such additional documents as are deemed reasonably necessary in connection with the establishment or defense of the challenged rights. Neither Party makes a warranty to the other regarding the adequacy of any property rights that support the installation or use of any Fiber.
- 5.4 **Franchise Rights and Licensing Costs.** Each Party shall each be responsible for all franchises and licenses as may be necessary for its operations.
- 5.5 **Liens.** In the event any of the Fiber becomes subject to any mechanics', artisans' or materialmen's lien, the responsible Party shall promptly cause the same to be discharged and released of record (by payment, posting of bond, court deposit or other means) without cost to the

other. The responsible Party shall indemnify the other against all costs and expenses (including reasonable attorney fees) reasonably incurred in discharging and releasing such lien. If any such lien is not so discharged and released within ninety (90) days after notice thereof by the responsible Party, then one Party may pay or secure the release or discharge thereof at the expense of the responsible Party. Nothing in this Contract shall preclude either Party from contesting any lien described above or the contract or action upon which the same arose after the same shall have been bonded or otherwise released of record, as provided above.

6.0 **CONDEMNATION AND RELOCATION**

- 6.1 **Taking.** Should any portion of the Fiber be made the subject of a Taking, the License granted to County under the terms of this Contract with respect to the Affected Portion, to the extent appropriated by such Taking, shall terminate. Contractor shall notify County immediately of any Taking threatened or filed against any portion of the Fiber. In addition, Contractor agrees not to sell or convey any portion of the Fiber to such acquiring authority in lieu of condemnation without giving prior notice to and the opportunity to County to participate in the negotiations with respect to such conveyance. In the proceeding for any such Taking (or an involuntary discontinuance of the use of a Segment in anticipation of a Taking), the interests of County and Contractor in and to the Affected Portion of the Segment shall be severed. Any awards resulting from the proceeding shall be allocated between and payable in accordance with the respective interests of County and Contractor (both physical and occupational, including any incremental value of the Right of Way by virtue of the installation therein of the Fiber).
- 6.2 **Relocation.** Contractor may relocate all or any portion of the Fiber: (i) if a third party with legal authority to do so orders such relocation or exercises its power of eminent domain (e.g., through filing or threatening to file a condemnation suit), or (ii) in order to comply with applicable laws, or (iii) if Contractor determines that relocation is necessary or desirable for the operation of its business. Any relocation or portion thereof made pursuant to clause (ii), which is necessary to comply with laws that were in effect at the time of Fiber Acceptance, or any relocation or portion thereof made pursuant to clause (iii), shall be considered a "Voluntary Relocation".

In the case of a Voluntary Relocation, Contractor will reimburse County for any reasonable direct costs, if any, incurred by County as a result of the relocation, provided that, upon request by Contractor, County shall provide supporting documentation of such costs. Contractor shall have the right to direct such relocation or Voluntary Relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to be used for such relocation provided that any such relocation: (a) shall be constructed in accordance with the specifications and requirements set forth in this Contract; and (b) shall not unreasonably interrupt service or use of County's Fiber. Contractor shall deliver to County updated route and access point maps and ring diagrams with respect to a relocated portion of the Fiber not later than one hundred eighty (180) days following the completion of such relocation. Voluntary Relocation of the licensed Fiber will be at Contractor's sole expense and Contractor will give County at least one hundred eighty (180) days prior written notice of any such Voluntary Relocation.

For relocations other than Voluntary Relocations, Contractor will give County at least one hundred eighty (180) days (or such lesser period of notice that Contractor may have received) prior written notice of any such relocation and such notice shall include an estimate of the costs which are likely to be incurred in connection with such relocation. County will have the option, exercisable in writing within fifteen (15) days after receipt of written notice of such relocation from Contractor, to participate in the relocation with respect to the affected Segment. In the event that County chooses not to participate in the relocation, then County will be permitted (at County's cost) to connect into the remaining Segments at mutually agreeable Splice Points. If County chooses to participate in the relocation, County shall reimburse Contractor (to the extent Contractor has not been reimbursed by third parties requiring said relocation) for a Pro Rata Share of the costs incurred by Contractor for relocating the Fiber and any amounts that Contractor is contractually required to pay any third party Facility Owner (provided such third party costs were identified in Contractor's cost estimate), provided that, upon request by County, Contractor shall provide supporting documentation of all such costs and amounts.

- 6.3 **Audit Rights.** Each Party shall have the right to designate its own employee representative(s) or its contracted representatives to audit and to examine at its own expense any cost, payment, settlement, or supporting documentation resulting from any items set forth in this Contract. Any such audit(s) shall be undertaken by either Party or its representative(s) at reasonable times and appropriate locations and in conformance with generally accepted auditing standards. The Party being audited agrees to fully cooperate with any such audit(s). This right to audit shall extend for a period of three (3) years following the date of each payment under this Contract. The Parties agree to retain all necessary records/documentation during this audit period or until any dispute in connection with an audit is resolved, whichever is longer.

The other Party shall be notified in writing of any exception taken as a result of an audit and shall respond in writing to such notification within thirty (30) days. Upon resolution of any exception, the owing Party shall directly refund the amount of any exception to the other Party within (30) days, with monthly, compounded interest calculated from the date of the original billing to the date of payment by owing Party. Interest rate to be used is the most recently available interest rate on commercial paper published in the Federal Reserve Statistical Release H-15 or the maximum legal rate, whichever is less.

7.0 **MAINTENANCE AND REPAIR GENERAL**

- 7.1 **Responsibilities.** Contractor shall be responsible for maintenance and repair of Fiber. IN NO EVENT WILL COUNTY PERSONNEL, TECHNICIANS OR COUNTY'S CONTRACTORS HANDLE OR OTHERWISE COME INTO CONTACT WITH THE CABLE, FIBERS, ANY CONDUCTORS OR ANY PORTION OF CONTRACTOR'S FIBER OPTIC SYSTEM, FACILITIES OR ANY LATERAL CONNECTION UNLESS AUTHORIZED BY CONTRACTOR.
- 7.2 **Contacts and Escalation Information.** The Parties will, at the beginning of each quarter, provide one another with an updated contact and escalation list to aid in trouble reporting and resolution, if changes have occurred since the previous quarter. The current list is attached as Exhibit B-2 and may be revised by either party from time to time by written Notice. Inaccurate contact and escalation information may prevent or delay Contractor from performing notification or other obligations.
- 7.3 **Fiber Restoration Standards and Priority.** In the event of a fiber cut caused by either Scheduled Maintenance or a Service Affecting Condition event, any splicing of the Fibers by Contractor, or Contractor's approved contractors will be done in a systematic manner with Fibers having equal priority with other third party fibers within the cable. The County reserves the right, at its sole cost, to have representatives present to monitor the progress of Contractor's restoration efforts.
- 7.4 **Re-Testing.** County, at its sole cost and expense, may re-test the Fibers at any time during the term of this Contract from and to its own equipment.

If it is reasonably determined that the Fibers do not comply with the Specifications, Contractor will correct the deficiencies at its expense, unless the deficiencies are caused by the act or omission of County or by County's Facilities, in which event County will reimburse Contractor for all Fully Loaded Costs, plus a 15% mark-up to correct the deficiencies. After correcting the deficiencies, Contractor shall re-test the Fibers according to Section 10.0 Acceptance and Acceptance Testing of this Exhibit.

If Contractor is unable to correct the deficiencies within thirty (30) days of the re-test, County may request that Contractor provide substitute Fibers and Contractor shall provide such substitute Fibers if available.

- 7.5 **Use of Subcontractors.** Contractor may outsource to third-party service providers or suppliers any Services it is obligated to provide under this Contract. Upon request, Contractor will send to County a current list of Contractor's third-party service providers.

- 7.6 **Coordination of Maintenance with LEC.** County shall be responsible for coordinating Scheduled Maintenance and Service Affecting Condition response and repair involving the LEC, including preparation, review and approval of MOPs between and among County, Contractor and the LEC.

8.0 **MAINTENANCE & REPAIR SCHEDULED MAINTENANCE-**

- 8.1 **General.** Scheduled Maintenance may occur for the purpose of maintaining or enhancing Contractor's fiber optic system or for County business needs. Maintenance of Fiber, typically requires an outage on a portion of Contractor's fiber optic system. Contractor will make commercially reasonable efforts to perform Scheduled Maintenance in a manner as to avoid a Service Affecting Condition. Subject to other terms of this Exhibit, Contractor has the right to perform Scheduled Maintenance without prior approval of the County.
- 8.2 **Single-Point-of-Failure.** In the instance of a Single-Point-of-Failure on a Fiber Segment, Scheduled Maintenance may cause a Service Affecting Condition. Such events are not subject to the terms of Section 11.0 (Service Interruption Credits), unless specifically provided for otherwise in an executed Product Order.
- 8.3 **Access.** County will grant timely access to Contractor at any County Facilities, buildings or property where Fiber subject to a Service Affecting Condition is located. A delay in the provision of access by County shall relieve Contractor from its obligations under Section 11.0 (Service Interruption Credits), for the period of time access was delayed by the action or inaction of County.
- 8.4 **Method of Procedure ("MOP").** The MOP is used for coordinating Scheduled Maintenance operations between Contractor and County using the form included as Exhibit B-3. Both Parties can revise the MOP form upon mutual agreement. All Scheduled Maintenance will be performed in accordance with the MOP and conducted according to the MOP process. The Party receiving the completed MOP form will review the MOP to correct deficiencies detected before or during the actual performance of Scheduled Maintenance, and request appropriate changes. Any MOP will be accepted via electronic mail or fax.
- 8.5 **Scheduled Maintenance Notification.** The Parties will make reasonable efforts to notify one another with five (5) days prior notice when possible, but not less than three (3) days prior notice, of any anticipated Scheduled Maintenance. For all Scheduled Maintenance, the notification will include:
- 8.5.1 An assigned technician, by name and contact number.
 - 8.5.2 A description of the work to be performed.
 - 8.5.3 Identification of what Fiber systems or Fiber will be affected.
 - 8.5.4 A date and time when the Scheduled Maintenance will take place, and an estimated completion time. For multiple-day requests, each day's activity and impact will be detailed.
 - 8.5.5 A list of all locations to be impacted by the Scheduled Maintenance for each site.
- 8.6 **Review of Notification.** When one Party receives a request for Scheduled Maintenance, it will verify the date, time, location and activity to ensure no conflicts exist with either on-going or previously scheduled work and will respond to the other Party within forty-eight (48) hours of receipt of such request.

If a conflict exists regarding Scheduled Maintenance, County and Contractor will coordinate to establish a new date if possible. Contractor has sole discretion in scheduling Contractor Scheduled Maintenance involving its fiber optic system.

- 8.7 **Contractor Scheduled Maintenance Windows.** To the extent possible without conflicting with Contractor's fiber optic system operations and standards, Contractor will attempt to conduct its Scheduled Maintenance at a time that will least affect County's use of the Fiber. Generally, Contractor will perform Scheduled Maintenance during daylight hours,. Standard Contractor Scheduled Maintenance windows are during normal Contractor business hours of 6:00a.m. – 5:00 p.m., Monday through Friday.
County may request "off-hour" maintenance windows, which must be the result of a mutually approved MOP and coordinated through their respective Network Operations Centers (NOCs). These "off-hours" maintenance windows are normally between the hours of 11:00 p.m. – 6:00 a.m., or as mutually agreed to between the Parties.
- 8.8 **Event Management. The County will be permitted to witness all Service Affecting Condition scheduled events such as switch loads, system overbuilds and upgrades. In addition to a completed MOP form, Contractor must notify County immediately prior to commencement of work. Contractor will provide sufficient information to allow County to, at their own cost:**
- 8.8.1 Maintain direct involvement with the Scheduled Maintenance to ensure the prevention of unnecessary switching and other activities, which may result in a Service Affecting Condition.
 - 8.8.2 Coordinate directly with one another and communicate any additional preventative steps or measures not foreseen during initial planning.
 - 8.8.3 Ensure that work efforts or unforeseen problems do not affect other work activities that are in progress.
- 8.9 **Status Notifications.**
- 8.9.1 Progress Reports. Contractor will notify County on progress or anticipated delays due to unusual circumstances, or when the maintenance windows deviate from original estimates in the MOP. Communication of status will occur every four (4) hours or immediately if unanticipated delays, events, or significant deviation from the approved MOP occur, and may be accomplished by telephone, including a voice mail message if during off-hours, or e-mail.
 - 8.9.2 Closing Notification. When the Scheduled Maintenance is considered complete, and all components are operationally ready, Contractor will notify County to verify that any related alarm conditions have been cleared. Notification may be by telephone, voice-mail or e-mail. The notification will include the date and time the work was completed and the alarms were cleared. The County may request an extension to the MOP if equipment or other problems preclude proper ring switching. In this event, the County must make commercially reasonable efforts to resolve the problem and allow Contractor to complete the MOP.
- 8.10 **Scheduled Maintenance During Force Majeure Events.** Scheduled Maintenance that occurs or coincides with unexpected events such as a storm, disaster, accident, or as otherwise described in Section 4.9 of the main Contract, may prevent Contractor from meeting Scheduled Maintenance intervals. In such events, Scheduled Maintenance will be re-scheduled to another available time, according to a MOP.

9.0 **MAINTENANCE & REPAIR SERVICE AFFECTING CONDITIONS RESPONSE & REPAIR**

- 9.1 **Response and Repair Intervals.** Upon Discovery during Contractor Scheduled Maintenance windows as described in Section 8.7 of this Exhibit, Contractor will dispatch properly equipped and trained personnel to a Service Affecting Condition and will make temporary repairs and restore the affected Fiber within four (4) hours ("Completion Interval") or Service Interruption Credits will apply. Upon Discovery outside of Contractor Scheduled Maintenance windows, Contractor will dispatch properly equipped and trained personnel to a Service Affecting Condition

and will make temporary repairs and restore affected Fiber within eight (8) hours ("Completion Interval") or Service Interruption Credits will apply. Any exceptions to these Service Affecting Condition response and repair intervals or any priority treatment of Fiber must be mutually agreed to and incorporated in an executed Product Order.

- 9.2 **Trouble Notification by County.** Service Affecting Conditions that are Discovered by County will be reported immediately to the Contractor NOC or as otherwise indicated in Exhibit B-2 or the executed Product Order. After response to the Service Affecting Condition as outlined in Section 9.1 of this Exhibit, Contractor will promptly notify County regarding the nature of the trouble and whether Fiber caused the trouble.
- 9.3 **Trouble Notification by Contractor.** Contractor's network management system does not monitor dark fiber. However, if County identifies a degradation of performance on Contractor internal network services that might indicate a fiber cut will result, the County will send a trouble notification to the Contractor's NOC. If Contractor discovers a network problem causing a Service Affecting Condition, Contractor will promptly attempt to notify County according to Exhibit B-2 regarding the nature of the trouble and whether the Fiber caused the trouble.
- 9.4 **Permanent Restoration.** Permanent restoration of the Fiber will be scheduled and performed as soon as practical. This restoration schedule will be mutually developed and approved prior to proceeding. Permanent repairs to the Fiber will return it to the Specifications, and will be performed by Contractor. After final repairs have been completed, County may test the Fibers from an access point designated by Contractor, to ensure integrity of the splices and provide Contractor with a copy of the test results. If requested by Contractor, County will provide access to the County's Facilities, building and property to allow testing from fiber patch panel to fiber patch panel. Contractor will remove all temporary Facilities.
- 9.5 **Trouble Ticketing Process and Procedures.** A mutually acceptable trouble ticketing process, conducted between County and the Contractor NOC will be developed between the Parties as needed. Generally, upon Discovery, the Contractor NOC will acknowledge the Discovery, record the time and other information, and open a trouble ticket.
- 9.6 **Status Notification.**
 - 9.6.1 Progress Reports. In addition to the initial notification, Contractor will use commercially reasonable efforts to provide a progress report by telephone, including a voice mail message if during off-hours, or e-mail, every four (4) hours during a Service Affecting Condition. Contractor will immediately notify the County if unanticipated delays or events occur.
 - 9.6.2 Closing Notification. When Service Affecting Condition repair is considered complete and all components are operationally ready, Contractor will notify the County that permanent restoration is complete and to verify that all related alarm conditions have been cleared. Notification may be by telephone, voice-mail or e-mail. Once notification is made, the open trouble ticket will be closed. When alarms have been verified and the activity is considered complete, Contractor will coordinate final event closure with the County. If contingency plans were implemented to protect the network during the performance of scheduled activities, Contractor will direct activities necessary to return the network to its normal configuration. Contractor will submit a Fiber Outage Report to the County in accordance with Exhibit B-3.
- 9.7 **County-Caused Service Outage.** If a Contractor technician is dispatched to respond to a Service Affecting Condition after a County Discovery and Notification, and the trouble is on the County side of the Demarcation Point, County will be billed for and shall pay Contractor's Fully Loaded Cost, plus a 15% mark-up to correct the deficiencies.

10.0 ACCEPTANCE & ACCEPTANCE TESTING

10.1 **General.** Contractor will perform fiber testing as described below and in accordance with the Fiber Specifications as described in Exhibit B-1. Contractor will test all Fibers at installation to assure operating characteristics are consistent with the Specifications. Contractor will perform Fiber re-test upon County request following Scheduled Maintenance or Emergency Maintenance events.

10.2 **Testing Methods.** Contractor will perform end-to-end connectivity testing of the Fibers, and any necessary bi-directional span testing. Loss measurements will be recorded using an industry-accepted laser source and a power meter.

10.2.1 OTDR Testing. Optical Time-Domain Reflectometry (OTDR) traces will be taken and splice loss measurements recorded and summarized on data sheets. For any span, OTDR testing will be performed where the fiber is terminated with a connector. OTDR testing will be conducted at both 1310nm and 1550nm wavelengths. OTDR testing will be conducted on a bi-directional basis for each Fiber(s) in each Segment at the appropriate wavelengths described above. The Acceptance Package will contain the actual traces that detail the testing parameters.

10.2.2 Insertion Loss Testing. This end-to-end loss measurement will be conducted from both directions for each Fiber(s) in a Segment. The bi-directional average will be used to determine the end-to-end loss of the Fiber(s) in a given Segment at each appropriate wavelength. This test will be conducted at both 1310nm and 1550nm. This insertion loss testing will ensure fiber continuity and the absence of crossed fibers in the Segment. All terminated Fiber(s) will be tested from the FODU, or other end points as specified in an executed Product Order, for each Segment. Insertion loss test results for Fiber(s) in a Segment must conform to the limitations identified in Limitations and Specifications section of this Exhibit, Bi-directional OTDR Testing.

10.3 **Loss Measurements.** This measured end-to-end loss value will be calculated based on; fiber strand attenuation as specified by the fiber optic cable manufacturer, the average splice loss, and industry standard connector loss. These three components will be considered the acceptance criteria and measured as dB loss from customer site to customer site. If after three (3) testing attempts, the Contractor technician is not able to produce a loss value within ranges stated below, the route will be brought into tolerance. OTDR events close in proximity to a test launch (connectors or splices in a building) will not be identified as events within the testing documentation. Rather, such events will be accounted for in the end-to-end loss budgets and documented.

10.3.1 The loss characteristics for enhanced Single Mode Fiber are described below:

10.3.1.1 at 1310nm: 0.5 dB loss per mile; 0.15 dB loss per fusion splice “average”

10.3.1.2 at 1550nm: 0.4 dB loss per mile; 0.15 dB loss per fusion splice “average”

10.3.2 Connector(s) and/or Jumper(s) Test Results

10.3.2.1 Connectors that terminate Fiber(s) in a Facility must be SC/UPC.

10.3.2.2 All Fiber protection for fan-out and terminating fiber jumpers at Facilities will have 900-µm tight buffer tube, a Kevlar strength member, and a cable jacket with an overall diameter 2.9-mm.

10.3.2.3 Reflectance must meet or exceed -45 dB for each connector event.

- 10.4 **Fiber Splicing.** All splices are fusion splice technology and will be measured from customer location to customer location. Acceptable splice loss specifications will be calculated as an average, and shall not exceed a 0.15 loss per splice average. This will be measured with an industry accepted OTDR, at 1310 and 1550 nm. Test measurements will be performed bi-directional.

Example: A strand of fiber is spliced at 12 separate locations within the fiber strand, from customer location "A" to customer location "B." The calculation to be used for acceptance is as follows:

$$12 \times 0.15 \text{ dB} = 1.8 \text{ dB}$$

1.8 dB = the maximum allowable db loss, specific to splice loss acceptance, for the fiber strand segment from customer location "A" to customer location "B."

- 10.5 **Test Results and Acceptance Documentation.** Test data will be placed in electronic format, such as a Microsoft Excel spreadsheet format to document the test results. All test results will be attached as documentation in support of the specific Acceptance Test Package for the Fibers under test for each Product Order. If splicing was involved before testing, a confirmation sheet or splice location sheet shall also be filled out and kept in the Contractor records.

- 10.6 **Testing Beyond the Contractor Demarcation Points.** Contractor may require access for testing of fibers beyond the designated Demarcation Point specifically described in an executed Product Order. Any testing beyond the Contractor's side of the Demarcation Point shall be performed in a coordinated fashion with County. In the event that the entire tested portion of the fiber does not satisfy the testing criteria set forth herein, Contractor and County shall work together in good faith to pinpoint the cause of the problem and each party shall be responsible for the timely performance of such repairs on the fibers owned by it, so that Contractor shall only be responsible for repairs needed to bring the Fiber(s) into compliance with this Exhibit. Contractor may in the event of a dispute regarding testing and acceptance of the Fibers within any such tested portion, arrange to have the Fiber(s) tested only to its side of the Demarcation Point(s) and, if such Fibers meet the testing criteria set forth herein, County shall accept such Fibers.

- 10.7 **Fiber Acceptance and Acceptance Package.** The Fiber is considered Accepted under the following conditions;

- 10.7.1 Receipt by Contractor of a copy of the Acceptance Package signed by County, or
- 10.7.2 upon five (5) days past the scheduled due date for the County's notifying Contractor of its Acceptance, if no such notice has been provided, or
- 10.7.3 in the event of an Expedited Product Order, the scheduled due date for the County's notifying Contractor of its Acceptance if no such notice has been provided.

- 10.8 **Deficiency Notification and Conditional Acceptance.** County must provide Contractor a Deficiency notice within five (5) days of receipt of the Acceptance Package. Upon receipt of Deficiency Notice, CONTRACTOR must correct the deficiencies bringing the Fiber(s) into compliance within the Specifications set forth in this document, or as specified in a Product Order, within seven (7) days after Contractor's receipt of the Deficiency notice, or County may exercise its rights under the Contract.

11.0 **Service Interruption Credits**

- 11.1 **General.** For a Service Affecting Condition, the County will be entitled to Service Interruption Credits for the affected Product Order and Fibers according to the following terms. County must request a credit in writing within thirty (30) days after the delivery of an invoice respecting the affected Fiber, or within thirty (30) days after the Discovery of the Service Affecting Condition, whichever is later, or any claim is waived. Request must provide necessary information describing the Service Affecting Condition event including:

- 11.1.1 Discovery date and time
 - 11.1.2 Duration of event.
 - 11.1.3 Product Order reference information
 - 11.1.4 Licensed Fiber or other Facilities affected
 - 11.1.5 Other information as requested by the other Party.
- 11.2 **Performance Interval.** The Service Interruption Credit time period begins after the Completion Interval referenced in Exhibit B-1 (Fiber Specifications, Demarcation, Maintenance, Acceptance and Acceptance Testing), and ends when the Service Affecting Condition has been remedied.
- 11.2.1 If the start and/or end time of a Service Affecting Condition is in dispute, then it will be deemed that in all events a Service Affecting Condition begins at the time of Discovery notification by County and, if such notice is not in writing, when Contractor acknowledges receipt of the notice, and ends upon Contractor giving the County notice that restoration of the affected Licensed Fibers has been completed.
 - 11.2.2 Service Interruption Credits will not be credited or payable for any period of time during which Contractor personnel or contractors are denied access to Facilities or other locations where access is the responsibility of the County.
- 11.3 **Credit Dispute and Payment.** The Service Interruption Credit shall be in the amount of one hours equivalent for each hour or part thereof for the first eight (8) hours following the Completion Interval and one day's equivalent License Fee for any part of the eighteen(18)-hour period thereafter.
- 11.3.1 If the Service Affecting Condition event exceeds twenty-four (24) hours past Completion Interval, the credit shall be one days equivalent License Fee for each subsequent 24-hour period, up to a maximum of thirty (30) days equivalent License Fee.
 - 11.3.2 All Service Interruption Credits for License Fees will be credited on, or added to, the next monthly invoice after receipt of County's written request for credit unless the request is disputed. Disputed Service Interruption Credits will be subject to the terms set forth in Section 4.18 of the main Contract.
 - 11.3.3 If there are no monthly invoices, or in the event the License Fee is annual or Lump Sum, the credit will be paid within thirty (30) days of receipt of County's written request for credit unless the request is disputed. Disputed Service Interruption Credits will be subject to the terms set forth under Section 4.18 of the main Contract.
- 11.4 **Service Interruption Credits Exceptions.** Service Interruption Credits do not apply to Service Affecting Conditions:
- 11.4.1 Caused by the negligence or acts of the County, its agents or its customers
 - 11.4.2 Due to power failure
 - 11.4.3 Due to the failure or malfunction of non-Contractor equipment or systems
 - 11.4.4 Caused by a Force Majeure event
 - 11.4.5 During any period in which Contractor is not given access to the County's Facilities, buildings, property or other locations for which it is responsible for providing access

- 11.4.6 During any period in which Contractor is not given access to any Owner's Facilities, Buildings, Property or other locations where Fibers, County Facilities or Services are to be performed by Contractor
- 11.4.7 When Scheduled Maintenance is performed according to an approved MOP
- 11.4.8 When Schedule Maintenance is performed on a single or unprotected Licensed Fiber path and an exception was not approved in a Product Order.

12.0 **Product Order Process**

- 12.1 **General.** The following outlines a process which the Parties agree to generally use, for the development of quotes and Product Orders. This process is not binding and neither Party shall be considered in breach of this Contract for its failure to follow this particular process.

Request For Quote & Quote Response Process. At any time during the term of this Contract, the County may request from Contractor quotations in the form of a Initial Quote (as defined below) or a Formal Quote (as defined below) with respect to the license of Fibers. A request for Initial Quote or Formal Quote shall take the form of a completed Customer Quote Request, which may be submitted by e-mail, fax or regular mail.
 - 12.1.1 Each such Customer Quote Request shall indicate the type of quote (e.g. Initial or Formal), and shall include information sufficient to prepare a Quote Response. Customer may not request a Formal Quote prior to Contractor's affirmative response to an Initial Quote for the same Fibers, Facilities or Services.
- 12.2 **Initial Quote.** An "Initial Quote" shall mean an estimated non-binding, budgetary price for License Fees, Maintenance Charges, Installation Charges, Connection Charges and any other applicable fees, the amount of and description of Fiber available for license, and will indicate an estimated Delivery interval.
 - 12.2.1 Contractor shall acknowledge receipt of a Customer Quote Request by the end of the next business day and identify whether or not Contractor intends to provide an Initial Quote.
 - 12.2.2 If Contractor intends to provide an Initial Quote, Contractor shall exercise reasonable efforts to provide an Initial Quote within fifteen (15) business days after receipt of such request. Once provided, an Initial Quote shall be valid for thirty (30) calendar days. If County provides insufficient or inaccurate information on the Customer Quote Request for an Initial Quote, the interval for the preparation of an Initial Quote shall be extended as necessary.
 - 12.2.3 The Initial Quote shall identify the applicable charge that shall be paid by County to Contractor for the preparation of a Formal Quote ("Administrative Charge") within thirty (30) after receipt of an invoice therefore.
- 12.3 **Formal Quote.** Upon receipt of the Initial Quote, County may request a Formal Quote-by providing a completed Customer Quote Request each such Customer Quote Request shall indicate the request is for a Formal Quote and shall include information sufficient to prepare a Formal Quote Response.
 - 12.3.1 A "Formal Quote" shall mean the firm-fixed price to be charged for Fiber License fees, Maintenance Charges, Installation Charges, Connection Charges, and other applicable fees, if any, Fiber availability, Delivery interval, route and any other particulars that Contractor wishes to include as part of the Formal Quote.
 - 12.3.2 Contractor shall reasonably attempt to acknowledge receipt of a Customer Quote Request for Formal Quote by the end of the next business day and identify whether or not Contractor intends to provide a Formal Quote. Should Contractor decide to not provide a Formal Quote,, County is relieved of any payment obligation of the Administration Charge. If Contractor intends to provide Formal Quotes Contractor will respond within

forty-five (45) calendar days after receipt of a Customer Quote Request for a Formal Quote. Once offered, a Formal Quote will be valid for acceptance by County for thirty (30) calendar days after County's receipt thereof. If County provides insufficient or inaccurate information on the Customer Quote Request for a Formal Quote, the interval for the preparation of a Formal Quote shall be extended accordingly.

- 12.4 **Product Order.** Upon receipt of a Formal Quote, County may accept such Formal Quote and request via e-mail, fax or regular mail that Contractor prepare a Product Order. The Product Order shall reflect the terms of the Formal Quote, as applicable. If any changes from the Formal Quote are requested, the pricing, availability, and Delivery intervals may change at Contractor's discretion.

12.4.1 Each Product Order will set forth, as applicable;

12.4.1.1 the number of Fiber strand miles and location of the licensed Fibers;

12.4.1.2 the location of Facilities;

12.4.1.3 the installation and construction services, if any, to be provided with respect to any Lateral Connection;

12.4.1.4 the Delivery Date;

12.4.1.5 the architecture and design of the licensed Fibers, including a diagram;

12.4.1.6 the Demarcation Points;

12.4.1.7 the amounts of any Installation Charges, Connection Charges, License Fees, Maintenance Charges, or any other charges;

12.4.1.8 the length of the term of the Product Order,

12.4.1.9 any exceptions to standards set forth in any Article and Exhibit specifying the applicable Article and Exhibit for each exception; and

12.4.1.10 the term of the Product Order..

12.4.2 A Product Order will only be effective upon execution by both Parties. Nothing in this Contract or in any of the communication leading up to the preparation of a Product Order shall be construed to require either Party to enter into any Product Order.

Prior to Delivery, the Parties may modify the architecture or configuration of the licensed Fibers, Lateral Connections, Demarcation Points or other elements listed in a fully executed Product Order, provided that such modification shall be in the form of a modified Product Order and shall be signed by authorized representatives of both Parties.

EXHIBIT B-1

Fiber Specifications, Demarcation, Maintenance, Acceptance & Acceptance Testing

1.0 Fiber Specifications

- 1.1 **Fiber Types.** Generally, Contractor will use enhance single mode fiber.
- 1.2 **Fiber Performance Specifications.** In the metropolitan segments, single mode optical cable will be used. Contractor may substitute alternative fibers if and only if such alternative fibers have performance specifications which are at least equal to the specifications set forth below:
 - 1.2.1 Optical Cable with single mode fiber
 - 1.2.2 Attenuation at 1310 nm = 0.5 dB/mi max
 - 1.2.3 Attenuation at 1550 nm = 0.4 dB/mi max

2.0 Other Fiber-related Standards

- 2.1 All Fiber(s) will be fusion spliced.
- 2.2 Any pigtail connectors located in a Facility will be fusion spliced.
- 2.3 Any optical interface, such as pigtail connectors and adapters will be SC.
- 2.4 All Fibers will consist of all enhanced single mode fiber. Any riser rated cable must be a cable that is flame-retardant UV-stabilized (OFNR and FT-4), fully water-blocked for use in any application, and suitable for installation in duct, and risers. All Fiber(s) will meet the UL-1666 OFNR specifications and will consist of loose buffer tube construction.
- 2.5 Fiber(s) will be constructed in accordance with sound commercial practices. The National Electric Safety Code will be followed in every case except where local regulations are more stringent, in which case local regulations will govern.
- 2.6 Fiber labeling scheme in a manhole environment where the Parties meet will be determined in the Product Order.

3.0 Demarcation Points

- 3.1 **General.** Demarcation Points define the respective ownership and maintenance responsibilities and obligations of the Parties. Demarcation Points for Fiber and Lateral Connections will be specified in each executed Product Order. Generally, Demarcation Points will be located in public utility easements or rights of way. Contractor is not obligated to provide locations for Demarcation Points on Contractor's own Right-of-Way.

Contractor will provide Facilities such as manhole, splice case, or fiber optic distribution unit (FODU) that will terminate the Fiber and be the Demarcation Point between Contractor's ownership and maintenance responsibilities and County's ownership and maintenance responsibilities. Contractor shall be responsible for maintenance of all Contractor Fibers on the Contractor side of the Demarcation Point, as well as any Contractor Facilities within Demarcation Points. County shall be responsible for maintenance of all Fibers on the County's side of the Demarcation Point, as well as any County Facilities within Demarcation Points.

County will provide the location that will be the Demarcation Point, including any permits, licenses, easements or other rights necessary to enable both Contractor and County to access the Demarcation Point.

The Parties will work cooperatively under an approved Method of Procedure (MOP) or construction plan to cross-connect and test the Fibers at and through the Demarcation Points for the purposes of Acceptance testing.

County may physically monitor any or all testing associated with preparation of an Acceptance Package upon seventy-two (72) hours notice prior to commencement by Contractor.

- 3.2 **Access.** In instances where the Demarcation Point is within an end-user or other third-party location (e.g. multi-tenant commercial building, carrier “hotel,” etc.), not under an active Building Entrance Contract, the County must arrange for its own collocation space and Facilities to connect the respective Fibers to Facilities, unless otherwise specified in an executed Product Order.
- 3.3 **Lateral Connections.** In the event County constructs a Lateral Connection that connects with the Contractor Fiber, County shall be responsible for the creation of the Demarcation Point, unless otherwise specified in an executed Product Order. County shall construct necessary Facilities to connect Contractor Fiber from County’s Splice Point to the Demarcation Point in accordance to the documentation in the executed Product Order.

EXHIBIT B-2

Contact/Escalation List Form

AGL NOC Contact/Escalation List

AGL Network Operations Center ("NOC") is available twenty-four (24) hours/day, seven (7) days/week.

Local Area:
Toll Free: No toll free number at this time

Field Operations

AGL Communications Construction & Maintenance and Communications Engineering -- Outside Plant groups are responsible for Licensed Fiber Scheduled Maintenance and Emergency Response & Repair.

For routine inquiries please contact the following personnel;

Communications Construction & Maintenance		
Communications Engineering – Outside Plant		

Escalation

In the event of emergencies or problem resolution regarding maintenance matters, use the following contact table;

Level	Contact Name	Title	Tel. #	Cell Phone	Email Address
1					
2					
3					
4					

County Field Operations

(Group/Department)	Name/Title	(Phone number) (Fax Number) (Address)
(Group/Department)	Name/Title	(Phone number) (Fax Number) (Address)

Escalation

In the event of emergencies or problem resolution regarding maintenance matters, use the following contact table;

<u>Level</u>	<u>Contact Name</u>	<u>Title</u>	<u>Tel. #</u>	<u>Cell Phone</u>	<u>Email Address</u>
1					
2					
3					
4					

MOP Coordination

(Group/Department)	Name/Title	(Phone number) (Fax Number) (Address)
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EXHIBIT B-3

Scheduled Maintenance Procedure Form

AGL Method-Of-Procedure

Fiber Optic Scheduled Maintenance Outage Notification

AGL MOP Number:

From Node:

To Node:

Date Originated:

Originator:

Phone Mobile:

Responsible Technician:

Mobile:

Pager:

Job Location:

City:

State: AZ

Brief Job Description:

Access required?

Where?

*****ACTIVITY CLASSIFICATION*****

Scheduled Maintenance ☐ Emergency Maintenance ☐

Date of Outage:

Time of Day Requested:

Expected Duration of Scheduled Maintenance:

Completion Date/Time:

Maintenance Window:

Circuit Level: Optical

Circuits, Customer(s) and/or End-users affected by Scheduled Maintenance:

If expected outage is > 50 mS switch hit, expected outage duration is:

<p>*****APPROVALS*****</p> <p>Operations Supervisor: _____ Date: _____</p>	
<p>*****GENERAL SPLICE DESCRIPTION*****</p> <p>Number of Fiber Splices:</p>	
<p>*****PRE SPLICE ACTIVITY*****</p> <p>Description:</p>	
<p>*****POST SPLICE ACTIVITY*****</p>	
<p>*****THIS CONCLUDES THIS MOP*****</p> <p>Originator: _____ Department: _____</p>	

EXHIBIT B-4

**Product Order Form
To
CONTRACT
By and Between
AGL NETWORKS, LLC
And**

MARICOPA COUNTY

Product Order Number: _____

Date: _____

This Product Order is for the installation or utilization of _____ strands of Fiber, pursuant to the Contract dated _____, between AGL Networks, LLC ("Contractor") and _____ ("County").

Scope of Work, including Facilities and County Fiber route:
(Metro description,)

Demarcation Points:

Street Address of Demarcation Point 1: Description of building entry and specific route and requirements

Street Address of Demarcation Point 2: Description of building entry and specific route and requirements

Delivery Date: _____

License Fee: \$ _____ per _____, payable on the _____.

Installation Charge: \$ _____

Connection Charge: \$ _____

Maintenance Charge: \$ _____

Term of use of Fibers: _____ years from Acceptance of Fiber.

Estimated Fiber miles: _____

Total Cost: \$ _____

Monthly Cost \$ _____

Early Termination Charge: [Language and table to be provided in the actual Product Order]

Special Requirements: County shall be responsible for securing all necessary rights to access, occupy, and conduct typical telecommunication operations within each respective building, including but not limited to access agreements, access fees, cross-connects beyond the Demarcation Points, coordination at any third party owned location, and, where applicable, necessary space for Contractor's fiber termination panel, all to ensure that the Delivery Date can be met. In the event that County has not provided any of the items in the foregoing sentence in time to allow Contractor to complete work at any location, Contractor may continue with the Acceptance of Fiber procedures to the extent possible and invoice for the services under this Product Order as if all locations were completed by the Delivery Date and Accepted by County.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Product Order and intending to be legally bound hereby, Contractor and County have executed this Product Order effective as of the date of execution by the last Party.

AGL NETWORKS, LLC

By: _____

Name: _____

Title: _____

Date: _____

MARICOPA COUNTY

By: _____

Name: _____

Title: _____

Date: _____

ZAYO FIBER SOLUTIONS LLC, 400 CENTENNIAL PARKWAY, SUITE 200, LOUISVILLE, CO 80027
AGL NETWORKS, LLC, 10 PEACHTREE PLACE NE, ATLANTA, GA 30309

PRICING SHEET: NIGP CODE 9204706

Terms:	NET 30
Vendor Number:	W000014125 X 2011000082 0
Telephone Number:	866/550-3275 303/414-4151
Fax Number:	404/584-3375 303/381-3307
Contact Person:	James A. Gillis Hannah Wanderer
E-mail Address:	aglnet@aglnet.com hwanderer@zayoenterprise.com
Certificates of Insurance	Required
Contract Period:	To cover the period ending January 31, 2014.